STATE OF MICHIGAN

COURT OF APPEALS

In re forfeiture of $3,300.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

$3,300 U.S. CURRENCY, et al.,

Defendants,

and

BRYAN ADAIR,

Appellant.

UNPUBLISHED
May 26, 1998

No. 200451
Wayne Circuit Court
LC No. 95-549198

Before: Hood, P.J., and MacKenzie and Doctoroff, JJ.

PER CURIAM.

A judgment of forfeiture was entered pursuant to MCL 333.7521 *et seq.*; MSA 14.15(7521) *et seq.* for cash and other items seized from a hotel room registered in appellant's name. Appellant appeals as of right, and we affirm.

Appellant argues that the trial court committed clear error by refusing to suppress the evidence seized pursuant to the warrantless search of his hotel room. He claims that his consent to search the room was not freely and voluntarily made. He argues that because there was no valid consent to search, the trial court's order of forfeiture was also clearly erroneous. Appellant advances numerous theories as to why his consent was not freely and voluntarily made. "Whether a consent is valid is a matter of fact based upon the evidence and all reasonable inferences to be drawn from it." *People v Reed*, 393 Mich 342, 362; 224 NW2d 867 (1975). The totality of the circumstances controls whether a consent is valid. *People v Malone*, 180 Mich App 347, 355-356; 447 NW2d 157 (1989). We

review a trial court's decision regarding the validity of consent for clear error and review a decision on a motion to suppress de novo. *People v Goforth*, 222 Mich App 306, 310; 564 NW2d 526 (1997). Findings of fact in a forfeiture proceeding where the trial court sits without a jury will not be set aside unless they are clearly erroneous. *In re Forfeiture of $18,000*, 189 Mich App 1, 4; 471 NW2d 628 (1991).

Appellant first contends that the situation was coercive in nature because three uniformed and armed police officers escorted him into his small hotel room and ordered him to sit in a chair in the corner. "The presence of coercion or duress would require a finding that consent was not given." *Reed, supra*. The record reveals that in this case, appellant was approached by officers in the hotel corridor. He was not in his room at the time he was approached, but his hotel room door was open. One of the officers asked if they could speak with appellant inside the room and appellant answered "yes." The record does not reveal that any threatening or coercive conduct took place prior to appellant's acquiescence in the officer's request to speak with him in the hotel room. Further, the record reveals that once appellant and the officers were inside the room, appellant was asked to sit in a chair. He thereafter willingly signed a consent-to-search form after indicating that he "didn't mind" if the officers searched the room. Although the room was small, appellant was seated and the officers were in uniform, nothing in the record reveals that there was a coercive situation. Certainly, the mere presence of uniformed officers does not constitute coercion. See *Reed, supra* at 366, where the Court indicated that the presence of a large number of officers and police personnel does not necessarily indicate that a situation is per se coercive.

Appellant next argues that because he was not informed that he could refuse the officer's request to enter his room and to conduct the search, his consent was invalid. We disagree. The record does indicate that none of the officers informed appellant that he did not have to consent or acquiesce in the officers' requests. This fact, however, does not lead to the conclusion that appellant's consent was involuntary. In *Malone, supra* at 356, this Court held that the consent was valid even though the driver of the vehicle, who consented to the search, was not apprised of his right to refuse consent. See *Schneckloth v Bustamonte*, 412 Mich 218, 231; 93 S Ct 2041; 36 L Ed 2d 854 (1973). Moreover, knowledge of the right to refuse consent is only one factor in the totality of circumstances construing the reasonableness of a search. *Reed, supra* at 363. Given the lack of coercion demonstrated by the record and the fact that one need not be informed of his right to refuse to consent, the officers' failure to orally advise appellant of his right to refuse to consent to the search did not render the consent involuntary. In addition, we note that there was testimony that appellant read the consent-to-search form, which indicated that he had a right not to consent to the search, prior to signing it.

Appellant next contends that he should have been read his *Miranda* rights before the search because he was not, contrary to the officers' claims, free to leave the room. We disagree. *Miranda* warnings are only necessary in cases involving custodial interrogations. *People v Anderson*, 209 Mich App 527; 531 NW2d 780 (1995). "To determine whether the defendant was in custody at the time of the interrogation, the totality of the circumstances must be examined. *The key question is whether the [appellant] could have reasonably believed that he was not free to leave.*" *People v Marbury*, 151 Mich App 159, 162; 390 NW2d 659 (1986) (citation omitted) (emphasis added). Under the

circumstances, we find that although none of the officers informed appellant that he was free to leave the room, there was ample evidence to support that a custodial environment did not exist. Appellant was not forced to enter the room or to sit down. Further, there was no evidence that he was coerced into consenting to the search. In fact, he indicated that he "didn't mind" if the officers conducted a search. Appellant was also not handcuffed. Because there was no custodial situation and no custodial interrogation, we find that *Miranda* warnings were not necessary and the failure to give them does not vitiate appellant's consent in this case.

Appellant also argues that his intoxicated state precluded him from knowingly and voluntarily consenting to the search. It was not erroneous for the trial court to fail to determine that the consent was involuntary because of appellant's intoxication. The hotel manager testified that he thought appellant was intoxicated because he saw him holding a beer and smelled alcohol on his breath. He also saw appellant fumbling around the elevator and believed that this indicated that appellant was intoxicated. None of the police officers testified, however, that appellant was intoxicated. In fact, one of the officers testified that he did not recall any indications of any alcohol and did not know if appellant was intoxicated. Because there was no conclusory evidence that appellant had a "high level of intoxication", it was not error for the trial court to fail to hold that intoxication negated appellant's consent to the search of his motel room. For that reason, we need not address the more general question as to whether advanced intoxication may vitiate consent to a search and seizure.

Appellant also claims that the officers had no probable cause to enter and search appellant's room and that they failed to obtain consent prior to seizing appellant's shotgun, which was in the plain view of the officers upon entering the room. Neither of these propositions creates a basis upon which to reverse the trial court's holding that the consent was valid. First, appellant cites no authority for the proposition that probable cause was necessary before the officers could ask to speak to appellant in his room and attempt to obtain a valid and voluntary consent to search. Where appellant has failed to cite to any authority to support his position, the issue is deemed abandoned. *Magee v Magee,* 218 Mich App 158, 161; 553 NW2d 363 (1996). This Court will not look for authority to support appellant's position that probable cause is a necessary prerequisite for a consent search. *Wojciechowski v General Motors Corp,* 151 Mich App 399, 405; 390 NW2d 727 (1986)[1].

Second, appellant presents no reasoning or authority for his claim that the officer's checking of his shotgun, which was in plain view upon their entry into the motel room, was unlawful or vitiated his subsequent consent to have the room searched. A protective search is lawful absent a warrant if it lasts no longer than necessary "to dispel the reasonable suspicion of danger" and is limited in scope. *People v Cartwright,* 454 Mich 550, 561-562; 563 NW2d 208 (1997). In *Cartwright,* an officer entered the mobile home under investigation and conducted a cursory search of areas where persons who could present a danger to the officers could be hiding. The Court held that the governmental interest in ensuring that the investigating officers were not at risk outweighed the minimal intrusion that occurred. *Id.* at 561. In this case, the officers were justified in checking to see if the shotgun was loaded upon entering the hotel room because the room was small and the shotgun was accessible to appellant. Thereafter, appellant freely consented to the search of the room, which search revealed numerous items related to drug trafficking and resulted in the forfeiture at issue.

Affirmed.

/s/ Harold Hood
/s/ Barbara B. MacKenzie
/s/ Martin M. Doctoroff

[1] Appellant cites to *People v Mullaney*, 104 Mich App 787; 303 NW2d 347 (1981) when discussing this issue. *Mullaney* has no bearing on any of the issues presented in this case. In *Mullaney*, the officers entered the house without permission and obtained consent from one sister to search the other sister's bedroom. This Court held that the defendant's sister could not consent to a search of defendant's bedroom, a place where the defendant had a reasonable expectation of privacy. *Id.* at 792. Moreover, the Court found that her consent was involuntary where the police obtained it by making false statements and had entered and begun searching the house before obtaining consent. *Id.* In this case, defendant allowed the officers to enter his room and he consented to the search.